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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/327,594	06/08/1999	HULYA DEMIRYONT	03897.08139	5631

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EXAMINER

MCNEIL, JENNIFER C

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 10/14/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/327,594

Applicant(s)

DEMIRYONT, HULYA

Examiner

Jennifer C. McNeil

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-14, 17-19.Claim(s) withdrawn from consideration: 15 and 16.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

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Advisory Action

Applicant states that Gillery fails to teach a thermostable solar coating, and that the process of Gillery does not use high temperatures. Applicant also argues that the coating of Gillery does not consist essentially of sputter deposited copper oxide because it is composed of many layers other than copper. Applicant states that the coating of Gillery may be formed on plastics.

Applicant's claim is to a thermostable glazing comprising a thermostable solar coating, wherein the solar coating consists essentially of sputter deposited copper oxide. It appears from the claim that the "solar coating" consists essentially of the copper oxide layer, while the coating itself may include other layers in addition to the copper oxide layer. The copper oxide layer of Gillery is considered a solar coating, and the additional layers are not considered part of the solar coating, but part of the coating in general. The sputter copper oxide layer of Gillery has not been shown to be structurally or characteristically different from that of the instant claims. While Gillery does not expressly teach that the copper oxide layer is subjected to higher temperatures, it has not been shown that the copper layer or overall coating would not be thermostable. The "process" applicant refers to is considered to be the process of depositing the layers on the substrate. This process is commensurate with that of applicant's disclosure. It is also noted that applicant's substrate may be plastic (page 9). The declaration offered by applicant has been carefully considered but is not persuasive. The declaration offers no evidence or explanation as to why the coating of Gillery may not be thermostable. From MPEP 706.01(c):

Objective evidence which must be factually supported by an appropriate affidavit or declaration to be of probative value includes evidence of unexpected results, commercial success, solution of a long-felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant. See, for example, *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984) ("It is well settled that unexpected results must be established by factual evidence." "[A]ppellants have not presented any

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experimental data showing that prior heat-shrinkable articles split. Due to the absence of tests comparing appellant's heat shrinkable articles with those of the closest prior art, we conclude that appellant's assertions of unexpected results constitute mere argument."). See also *In re Lindner*, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972); *Ex parte George*, 21 USPQ2d 1058 (Bd. Pat. App. & Inter. 1991).

Regarding applicant's arguments over King, while King may not teach heating the article to a higher temperature, applicant has offered no explanation or evidence that the article of King, which is structurally similar to that of the applicant as well as formed with the same method claimed by applicant, would not be thermostable.

Is the fact that applicant's coating is thermostable an unexpected result?


JCM